

HOUSE BILL 312

E2

11r0871
CF SB 17

By: **Chair, Judiciary Committee (By Request - Maryland Judicial Conference)**

Introduced and read first time: February 2, 2011

Assigned to: Judiciary

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2011

CHAPTER _____

1 AN ACT concerning

2 **Courts - Sentence Review - Review Panel**

3 FOR the purpose of altering the number of judges on a criminal sentence review panel;
4 altering a certain definition to require review panel judges to be of a certain
5 judicial circuit; clarifying who is entitled to a sentence review by a review panel;
6 clarifying that a sentence includes any suspended portion for the purposes of a
7 sentence review; repealing a provision of law authorizing a certain sentencing
8 judge to sit with a review panel in an advisory capacity; ~~authorizing~~ prohibiting
9 a review panel ~~to confer~~ from conferring with a certain sentencing judge;
10 establishing that the sentencing court retains jurisdiction over a defendant's
11 case and may rule on a certain motion if the review panel decides that the
12 sentence should remain unchanged; establishing that a review panel has
13 jurisdiction over a defendant's case once a sentence has been changed;
14 establishing that, after resentencing by a review panel, the defendant may file a
15 certain motion for modification even if the defendant previously filed a certain
16 motion for modification; clarifying who may be heard at a criminal sentence
17 review hearing; making a certain clarifying change; and generally relating to
18 criminal sentence reviews and review panels.

19 BY repealing and reenacting, with amendments,
20 Article - Criminal Procedure
21 Section 8-101, 8-102, 8-105, and 8-106
22 Annotated Code of Maryland
23 (2008 Replacement Volume and 2010 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Criminal Procedure**

4 8–101.

5 (a) In this subtitle the following terms have the meanings indicated.

6 (b) “Review panel” means a group of three [or more] circuit court judges **OF**
7 **THE JUDICIAL CIRCUIT IN WHICH THE SENTENCING COURT IS LOCATED** who
8 conduct a review proceeding in connection with an application for a review of a
9 sentence under this subtitle.

10 (c) “Sentencing court” means the court in which the sentencing judge
11 imposed the sentence or required that a sentence that was wholly or partly suspended
12 be served.

13 (d) “Sentencing judge” means the judge who imposed a sentence or who
14 required that a sentence that was wholly or partly suspended be served.

15 8–102.

16 (a) [Except as provided in subsection (b) of this section, a] **A** person
17 convicted of a crime **OR FOUND IN VIOLATION OF PROBATION** by a circuit court and
18 sentenced to serve a sentence that exceeds 2 years in a correctional facility is entitled
19 to a single sentence review [by a review panel] **OF THE SENTENCE IMPOSED FOR**
20 **THE CRIMINAL CONVICTION OR THE VIOLATION OF PROBATION, BUT NOT BOTH,**
21 **IN ACCORDANCE WITH THIS SUBTITLE.**

22 (b) [A person is not entitled:

23 (1) to a sentence review if the sentence was imposed by more than one
24 circuit court judge; or

25 (2) to a review of an order requiring a suspended part of a sentence to
26 be served if:

27 (i) the sentence originally was wholly or partly suspended;

28 (ii) the sentence was reviewed; and

29 (iii) the suspended sentence or suspended part of that sentence
30 later was required to be served.

1 (c) For purposes of this subtitle, a sentence that exceeds 2 years is a
2 sentence in which the total period of the sentence, **INCLUDING ANY SUSPENDED**
3 **PORTION**, [and any unserved time of a prior or simultaneous sentence] exceeds 2
4 years[, including:

5 (1) a sentence imposed by a circuit court;

6 (2) a requirement by a circuit court that all or part of a suspended
7 sentence be served; and

8 (3) a prior or simultaneous sentence, suspended or not suspended,
9 that has been imposed by a court or other authority of the State or of another
10 jurisdiction].

11 8–105.

12 (a) (1) A review panel consists of three [or more] circuit court judges of
13 the judicial circuit in which the sentencing court is located.

14 (2) **THE SENTENCING JUDGE MAY NOT BE A MEMBER OF THE**
15 **REVIEW PANEL.**

16 (b) [Notwithstanding any Maryland Rule, the sentencing judge may not be a
17 member of the review panel, but on request of the sentencing judge, the sentencing
18 judge may sit with the] **THE** review panel [only in an advisory capacity] **MAY NOT**
19 **CONFER WITH THE SENTENCING JUDGE.**

20 (c) (1) A review panel shall consider each application for review of a
21 sentence.

22 (2) A review panel may require the Division of Parole and Probation to
23 make investigations, reports, and recommendations.

24 (3) A review panel:

25 (i) with or without a hearing, may decide that the sentence
26 under review should remain unchanged; or

27 (ii) after a hearing, may order a different sentence to be imposed
28 or served, including:

29 1. an increased sentence;

30 2. ~~subject to § 8-107(e) of this subtitle,~~ a decreased
31 sentence, **TO THE EXTENT ALLOWED BY § 8-107 OF THIS SUBTITLE;**

1 3. a suspended sentence to be served wholly or partly; or

2 4. a sentence to be suspended with or without probation.

3 (4) In deciding to order a different sentence, the review panel may
4 impose ANY LAWFUL conditions that the review panel considers just [and that could
5 have been imposed lawfully by the sentencing court when the sentence was imposed].

6 (d) If the review panel orders a different sentence, the review panel shall
7 resentence and notify the defendant in accordance with the order of the panel.

8 **(E) IF THE REVIEW PANEL DECIDES THAT THE SENTENCE SHOULD**
9 **REMAIN UNCHANGED, THE SENTENCING JUDGE RETAINS JURISDICTION OVER**
10 **THE CASE OF THE DEFENDANT AND MAY RULE ON A MOTION FOR MODIFICATION**
11 **FILED UNDER MARYLAND RULE 4-345.**

12 ~~(E)~~ **(F) (1) IF THE REVIEW PANEL ORDERS A DIFFERENT**
13 **SENTENCE, THE SENTENCING JUDGE MAY NOT TAKE ANY FURTHER ACTION**
14 **REGARDING THE CASE OF THE DEFENDANT.**

15 **(2) AFTER RESENTENCING BY A REVIEW PANEL;**

16 **(I) ANY FURTHER ACTION IN THE CASE, INCLUDING ANY**
17 **VIOLATION OF PROBATION, SHALL BE TAKEN BY THE REVIEW PANEL MEMBER**
18 **DESIGNATED BY THE REVIEW PANEL; AND**

19 **(II) THE DEFENDANT MAY FILE A MOTION FOR**
20 **MODIFICATION OF THE NEW SENTENCE UNDER MARYLAND RULE 4-345, EVEN**
21 **IF THE DEFENDANT PREVIOUSLY FILED A MOTION FOR MODIFICATION OF THE**
22 **ORIGINAL SENTENCE.**

23 8-106.

24 (a) A review panel may increase, modify, or reduce a sentence only after
25 notice to each party and notice to any victim or victim's representative as provided
26 under § 11-104 or § 11-503 of this article.

27 (b) [Before changing] **AT A HEARING FOR A REVIEW OF** a sentence, a
28 review panel shall allow:

29 (1) [each party] **THE STATE, DEFENDANT, AND DEFENDANT'S**
30 **COUNSEL** to be heard at the hearing; and

31 (2) the victim or victim's representative to attend the hearing, as
32 provided by § 11-102 of this article, and to address the review panel, as provided by §
33 11-403 of this article.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.